An Iowa Law in Need of *Imminent* Change: Redefining the Temporal Proximity of Force to Account for Victims of Intimate Partner Violence Who Kill in Non-Confrontational Self-Defense

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ABSTRACT: In 2010, in response to gendered sentencing discrepancies resulting from the "immediacy" requirement in the provocation partial defense, the United Kingdom enacted the Coroners and Justice Act, which abolished provocation and replaced it with the defense of "loss of self-control." Under the new law, women who kill their abuser in non-confrontational situations no longer have to defend themselves "immediately" at the very instant an abuser threatens their life. Under Iowa self-defense law, which operates as a complete defense, an abuse victim must show she is in "imminent" danger of death or serious injury when she defends herself. Iowa courts interpret "imminent" to mean "immediate" as in the United Kingdom. Women who use force against their assailant in non-confrontational settings cannot show temporal proximity of force, which leads to harsher sentences than men receive for killing a partner. After reflecting on the history, legal treatment, and pervasiveness of intimate partner violence in the United States and Iowa, this Note analogizes to the United Kingdom to argue that Iowa should redefine the imminence requirement in its statute.

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I. INTRODUCTION

On August 30, 2002, in the small town of Defiance, Iowa, Dixie Shanahan shot and killed her husband, Scott Shanahan.[1] In 2004, a jury found Dixie Shanahan guilty of second-degree murder after deliberating for less than a day.[2] The judge sentenced her to 50 years of imprisonment with eligibility for parole after 35 years.[3] The jury's quick deliberations and the judge's long sentence, without more, suggested a cut-and-dry case of just punishment for an apparent wrongdoer. However, the facts elucidated at trial told a different story to some Iowans.[4]

Dixie and Scott's relationship dated back to 1983, as did the physical and verbal abuse Scott inflicted.[5] Along with marriage and children came an escalation of violence over the course of their 19-year relationship.[6] Scott's abuse was relentless: "Scott blackened Dixie's eyes, bruised her, threatened her, dragged her by her hair, pointed guns at her, tied her up and left her for days in the basement,[7] called her vile names, degraded her in front of friends, and generally made her life a living hell."[8] In addition to this regular abuse, Scott smashed her head into doors in the house, ran over her legs with a lawn tractor, and committed other forms of unspeakable abuse.[9] Dixie sought police intervention for the continuous abuse on three occasions, which resulted in "[t]hree cases, six days in jail, and one order that Scott attend counseling."[10] In short, "[l]ike many battered women who kill, it must have

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1. Leigh Goodmark, *The Punishment of Dixie Shanahan: Is There Justice for Battered Women Who Kill?*, 55 U. KAN. L. REV. 269, 269 (2007).

2. *Id.*

3. *Id.* at 270.

4. *Id.* at 269 ("Some characterized Dixie Shanahan's actions as a final, desperate attempt to save herself and her baby; others conceded the severity of the abuse she endured over the years but maintained that she had no right to take Scott Shanahan's life.").

5. *Id.* at 269, 272.

6. *Id.* at 269, 272–78.

7. *Id.* at 274. This behavior occurred on three separate occasions, "leaving [Dixie] in their basement for up to two days, not allowing her to go to the bathroom, telling her, 'You know, I could let you just sit here and die . . . and nobody would know the difference.'" *Id.* Two of these occasions were a result of Scott's efforts to regain control over the relationship after Dixie announced her plan to leave Scott. *Id.* at 274 n.40 (citation omitted).

8. *Id.* at 269.

9. *Id.* at 275. Dixie recounted other egregious incidents of abuse in her testimony at trial, including Scott sticking her head down the toilet while her children watched, beating her with a cowboy boot, and poking her in the eye so violently that it bled—just because she was wearing a red shirt he did not like. *Id.* at 274. Scott also smashed a plate of food over Dixie's head because he did not like how it had been prepared, bit her leg, threw tools at her face, and verbally abused her both inside and outside their home, "telling her friends they should teach her to be better in bed because she was terrible, no good, and worthless." *Id.* at 275.

10. *Id.* at 275, 285.

been clear to Dixie Shanahan that the police and courts had little to offer her by way of protection."[11]

As the violence continued to escalate, to the point where Scott physically abused Dixie three to four times per week, Dixie found out she was pregnant with their third child and refused Scott's demands for an abortion.[12] Scott told Dixie on multiple occasions that he would ensure she did not have the baby.[13] On August 30, 2002, an infuriated Scott beat Dixie's stomach in front of their daughter as he screamed, "I'm gonna' kill this baby one way or another."[14] After sending her daughter to seek refuge at a friend's house, Dixie attempted to leave in her car.[15] Dixie testified that "Scott took her car keys, knocked her to the ground, and dragged her into the house by her hair, pulling chunks of hair out of her head."[16] Scott beat Dixie, left, and "returned with a shotgun, enraged, visibly shaking, and calling Dixie obscene names. He jammed two different shells into the gun, then pointed the gun at Dixie, and said, 'This day is not over yet. I will kill you.'"[17] After beating Dixie yet again, Scott unplugged all the phones and took them into the bedroom with him where he laid on the bed.[18] Dixie decided to call the police and went to the bedroom to use the then only working phone in the house.[19] Dixie testified that as she went to pick up the phone, Scott moved towards her, and she picked up the shotgun next to the phone instead.[20] She shut her eyes and shot Scott while he lay in bed.[21]

Dixie Shanahan, like other battered women who kill their abusers, escaped the prison her own home had become only to face a lengthy incarceration for defending her life and her unborn child. The jury refused Dixie's self-defense claim on the grounds that her husband did not present an "imminent"—read as immediate[22]—threat to her life when she shot him,

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11. *Id.* at 286; *see also id.* at 286 n.136 ("Dixie lacked access to other resources to escape the violence. Because of the lack of services for battered women in rural Iowa, Dixie would have needed to travel at least forty miles to access services." (citing Jeff Eckhoff, *Most Iowa Counties Lack Havens for Women*, DES MOINES REG., May 1, 2004, at 1A)).

12. *Id.* at 277.

13. *Id.* ("Scott repeatedly beat Dixie and told her that she was not going to have the baby, that he would make sure that she would not have the baby, and that there was nothing she could do about it." (citation omitted)).

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 278.

19. *Id.*

20. *Id.* "The prosecution contended that Scott was asleep on the bed when Dixie killed him; Dixie repeatedly testified that Scott was awake and made a move toward her." *Id.* at 278 n.82.

21. *Id.*

22. *See infra* Part II.D.2 (explaining the split between jurisdictions that interpret "imminent" to mean "immediate" and those that define "imminent" as something likely to occur in the future).

as required under Iowa law, since he was sleeping.[23] Her story illuminates the problem of "immediacy" for victims of intimate partner violence who kill their abuser in "non-confrontational" self-defense in Iowa.

This Note argues that Iowa should remove "imminence" from its self-defense law and replace it with language that accounts for the experiences of victims of intimate partner violence who defend themselves from unavoidable harm. Part II provides the background of intimate partner violence in the United States and Iowa, looking at the legal inequality women faced historically, the prevalence of intimate partner violence, the abuse victims who need to act in self-defense, the defenses available today, and the problem of "immediacy." Part III examines Iowa's and the United Kingdom's approaches to the "immediacy" problem. Part IV proposes that Iowa should follow the United Kingdom's approach to the "immediacy" problem and eliminate "imminence" from its self-defense law. It argues that Iowa should replace "imminence" with "impending or forthcoming" in light of the totality of the circumstances present in a particular instance of self-defense.

II. UNDERSTANDING INTIMATE PARTNER VIOLENCE IN THE UNITED STATES: HISTORICAL REFLECTIONS AND THE RESPONSE OF THE CRIMINAL LEGAL SYSTEM

This Part provides an overview of intimate partner violence and traces the history of the courts' treatment of abuse victims and survivors, particularly those who take a stand against their abuser in a final act of desperation in an attempt to live a life free of violence. Subpart A examines where abuse victims are situated within the broader history of intimate partner violence and the law. Subpart B offers a summary of the prevalence of intimate partner violence across the United States and in Iowa. Subpart C considers the victims that reforms to the self-defense law would impact. Subpart D reviews the current defenses available, discussing self-defense law and the historical problem of "immediacy."

A. *A BRIEF HISTORY OF THE LEGAL INEQUALITY TOWARDS WOMEN AND ABUSE VICTIMS*

> From the earliest twilight of human society, every woman . . . was found in a state of bondage to some man. . . . How vast is the number of men, in any great country, who are little higher than brutes, and . . . this never prevents them from being able through the laws of marriage, to obtain a victim. . . . The vilest malefactor has some wretched woman tied to him, against whom he can commit any

23. Goodmark, *supra* note 1, at 310–11.

> atrocity except killing her . . . and even that he can do without too much danger of legal penalty.[24]
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> *John Stuart Mill, 1869*

John Stuart Mill's quote illustrates the inequality women have faced historically. This idea of women as "little more than the property of their husbands" pervaded English common law.[25] Under the principle of coverture, "[a] woman's status excluded her from the legal process and placed her within the category reserved for children and servants."[26] She could not own property without the permission of her husband and had few rights.[27] Into the 1600s, throughout Europe, men had the right to kill their wives and faced no repercussions because the law viewed women as property.[28] This legal preference for men over women was further evidenced by the penalty a woman faced when she killed her husband; she "was penalized as if she had committed treason because her act of homicide was considered analogous to murdering the king."[29]

As English common law continued to develop, women still lacked any legal recourse for their husbands' actions and found little to no protection under the law. For example, the common law fully endorsed intimate partner violence, adopting the ancient "rule of thumb"[30] in the 1700s.[31] A husband lawfully "had the right to chasten his wife with a whip or rattan no larger than his thumb in order to reinforce discipline."[32] During this same period, courts started recognizing justifications for killing a woman, including if she committed the act of adultery or nagged her husband.[33]

Across the Atlantic in the newly founded United States, the former English citizens continued to look to English common law as a model for the American legal system. As such, until the early nineteenth century the "rule

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24. BRENDA L. RUSSELL, BATTERED WOMAN SYNDROME AS A LEGAL DEFENSE: HISTORY, EFFECTIVENESS AND IMPLICATIONS 28 (2010) (alteration in original) (quoting JOHN STUART MILL, THE SUBJECTION OF WOMEN 8, 63–65 (1869)).

25. *Id.* at 28–29 ("A woman's status as property is underscored in cases of rape as described in English common law. English rape laws considered rape as a crime against the husband, father, or fiancé of the victim." (citing Michael Dowd, *Dispelling the Myths About the "Battered Woman's Defense:" Towards a New Understanding*, 19 FORDHAM URB. L.J. 567, 568 (1992))).

26. *Id.* at 29.

27. *Id.*

28. *Id.* (citing Dowd, *supra* note 25).

29. *Id.*

30. *See id.* at 29 ("The tenets underlying the rule of thumb date back to 1800 BCE, as the code of Hammurabi declared women's subservient status, allowing a husband to inflict punishment on any member of his household for any transgression.").

31. *Id.* at 29.

32. *Id.*

33. *Id.* "Nagging" here presumably constituted nothing more than a wife bothering her husband to do something in one manner or another.

of thumb" remained good law, and state supreme courts continued to uphold husbands' rights to discipline their wives.[34] Moreover, courts ruled that the sanctity and privacy of the family kept it immune from legal authority and sanctions.[35] This tradition of viewing intimate partner violence as something best handled within the privacy of the home transcended other areas of criminal law. For instance, law enforcement failed to recognize domestic violence as a criminal offense, and "[t]he victim was all too often blamed for causing the abusive behavior, e.g. by 'button pushing.' As a result, the victim frequently remained silent about the abuse, rather than suffer criticism and shame, and possible retaliation by the abuser for involving the police."[36]

As the law of self-defense for battered women started to take shape, so too did gender bias, which impacted the law's development. According to renowned feminist legal scholar Elizabeth M. Schneider, "[h]istorically, views of women as being unreasonable, sex-bias in the law of self-defense, and myths and misconceptions concerning battered women have operated to prevent battered women from presenting acts of homicide or assault committed against batterers as reasonable self-defense."[37] In efforts to present testimony of Battered Woman Syndrome, sex stereotyping became commonplace.[38]

State v. Wanrow, decided in 1977, became the seminal case for highlighting the gender biases against battered women in the law.[39] Since this case, self-defense work for battered women has operated under the premise that the "self-defense requirements of reasonableness, imminent danger and equal force are sex-biased."[40] A battered woman who kills her partner violates the norm for women's behavior in killing and must overcome misconceptions by demonstrating the following:

> [W]hy she stayed in the relationship and did not leave her home; why she did not call the police or get other assistance before acting; and why she believed that at the time she responded the danger she faced was imminent, posed a threat to her life, and was therefore

34. *Id.* at 30 (citing V.M. Mather, *The Skeleton in the Closet: The Battered Woman Syndrome, Self-Defense and Expert Testimony*, 39 MERCER L. REV. 545, 545–89 (1988)). *But see* CHRISTINA HOFF SOMMERS, WHO STOLE FEMINISM?: HOW WOMEN HAVE BETRAYED WOMEN 203–07 (1994) (disputing the historical veracity of the "rule of thumb"). *See generally* People v. Berry, 556 P.2d 777 (Cal. Ct. App. 1976) (showing how a wife's supposed provocation continues to provide men with a legal defense).

35. RUSSELL, *supra* note 24, at 30.

36. MARGARET C. JASPER, THE LAW OF VIOLENCE AGAINST WOMEN 12–13 (2d ed. 2007).

37. Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L. REP. 195, 198 (1986).

38. *Id.* at 196–98.

39. *See generally* State v. Wanrow, 559 P.2d 548 (Wash. 1977).

40. Schneider, *supra* note 37, at 201.

> different and more serious than other times when she had been beaten, had not acted, and had survived.[41]

As Dixie Shanahan's case indicates, misconceptions are still present within the legal system today, and women must justify their actions.[42]

Years later, gender bias remained prevalent in the emerging Battered Woman Syndrome "defense." Lawyers, during direct examination, focused on "the passive, victimized aspects of battered women's experience, their 'learned helplessness,' rather than circumstances which might explain the homicide as a woman's necessary choice to save her own life."[43] As the word "syndrome" in the title demonstrates, courts overlooked women's agency. Inadvertently, after hearing the testimony, judges regarded women as passive victims.[44] This presented problems for battered women's self-defense arguments, since the judges perceived "battered woman syndrome as a form of incapacity."[45] As Schneider recounts, the main problem battered women who kill and claim self-defense confront in the courtroom is how to show their action was reasonable.[46] When judges hear testimony that presents the victim as passive and overlooks her self-agency and daily actions to protect herself, the lethal action the victim took to end her abuse once and for all seems all the more unreasonable.[47]

It was not until *State v. Kelly* in 1984 that a court recognized the challenges and biases a jury might face in trying to understand the battering relationship—including understanding the victim's subjective reasonableness —and offered expert testimony as a solution to remedy the problem.[48] In doing so, the courts also started to explicitly recognize the prevalence of gender bias in self-defense law, both within the concept of reasonableness and within the jury's determinations of guilt or innocence.[49] However, reasonableness was measured against the reasonable man, and juries wondered whether the woman really had a good, objective reason to believe

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41. *Id.*

42. *See supra* Part I.

43. Schneider, *supra* note 37, at 198.

44. *Id.*

45. *Id.* at 199.

46. *Id.* at 199–200.

47. *Id.* ("[T]he overall impact of the battered woman syndrome stereotype may be to limit rather than expand the legal options of women who cannot conform to these stereotypes. Judges are not likely to recognize the need for expert testimony in those cases where the woman's actions significantly depart from both the traditional 'male' model of self-defense and the passive 'battered woman' model.").

48. *Id.* at 212 n.112 (citing State v. Kelly, 478 A.2d 364, 379 (N.J. 1984)) ("As previously discussed, a battering relationship embodies psychological and societal features that are not well understood by law observers. Indeed, these features are subject to a large group of myths and stereotypes. It is clear that this subject is beyond the ken of the average juror and thus is suitable for explanation through expert testimony.").

49. *Id.* at 212.

she was in danger when she defended herself.[50] They also questioned why the woman did not simply leave the relationship.[51] It is against this backdrop that women continue to face an uphill battle in gaining true equality under the law.

B. THE PREVALENCE OF INTIMATE PARTNER VIOLENCE IN THE UNITED STATES AND IN IOWA

On average, three women are murdered by an intimate partner each day in the United States.[52] Intimate partner violence,[53] historically referred to as domestic violence,[54] describes "a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner."[55] The abuse can take many forms, including physical, psychological, sexual, economic, and emotional abuse.[56]

Intimate partner violence constitutes "the largest single category of violent crime" in the United States.[57] It "is the leading cause of injury to women[,] with more incidents than car accidents, muggings, and rape combined."[58] As of 2008, intimate partner violence comprised 5% of all

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50. *Id.* at 210–11, 216 n.144.

51. *Id.* For reasons why women stay, see *infra* Parts II.B–C.

52. *See* SHANNAN CATALANO ET AL., U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS SELECTED FINDINGS: FEMALE VICTIMS OF VIOLENCE 2–4 (2009), *available at* http://www.bjs.gov/content/pub/pdf/fvv.pdf; *Violence Against Women in the United States: Statistics*, NAT'L ORG. FOR WOMEN, http://www.now.org/resource/violence-against-women-in-the-united-states-statistic/ (last visited Nov. 2, 2014).

53. This Note uses the term "intimate partner violence," rather than the more common term "domestic violence," to encompass same-sex relationships and to avoid feminist criticisms of the older terminology. *See* CLARE DALTON & ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND THE LAW 3 (2001) ("[T]he very adjective 'domestic' seems to 'domesticate' the problem, making it sound as if this violence is somehow less threatening, less lethal, than violence between strangers, or violence on the street. Too many women know that this is not the case. . . . [B]ecause of the strong cultural association between 'domesticity' and families headed by heterosexual partners, the label 'domestic violence' helps us overlook the extent to which 'intimate partner violence' is as endemic to same-sex partnerships as it is to heterosexual ones."). Despite the descriptor "intimate," sexual intimacy is unnecessary for intimate partner violence to occur. *Intimate Partner Violence*, CTRS. FOR DISEASE CONTROL & PREVENTION, http://www.cdc.gov/violenceprevention/intimatepartnerviolence/ (last updated Sept. 18, 2014).

54. *Intimate Partner Violence*, NAT'L INST. OF JUST. (Oct. 24, 2007), http://www.nij.gov/topics/crime/intimate-partner-violence/Pages/welcome.aspx.

55. JASPER, *supra* note 36, at 11; *see also Power and Control Wheel*, DOMESTIC ABUSE INTERVENTION PROJECT, http://www.theduluthmodel.org/pdf/PowerandControl.pdf (last visited Nov. 2, 2014) (depicting the power and control abusers exercise over victims/survivors, manifested through "minimizing, denying and blaming," and using isolation, emotional abuse, intimidation, coercion, threats, and economic abuse).

56. *See* JASPER, *supra* note 36, at 12.

57. MICHELLE MADDEN DEMPSEY, PROSECUTING DOMESTIC VIOLENCE: A PHILOSOPHICAL ANALYSIS 7 (2009) (citation omitted).

58. Kaitlin Dewulf, *Officials Study Domestic Violence*, DAILY IOWAN (Apr. 28, 2014, 5:00 AM), http://www.dailyiowan.com/2014/04/28/Metro/37711.html.

violence perpetrated against males and 22% of all violence directed at females.[59] Reports from the Bureau of Justice Statistics in 2005 indicate that intimate partner violence occurred in one out of 320 households.[60] In fact, the most dangerous place for a woman in the United States is in her own home.[61] Although it is important to recognize that batterers and victims/survivors can be of either gender, women remain the primary targets of intimate partner violence,[62] with one in four women experiencing some form of intimate partner violence in her life.[63]

In Iowa, intimate partner violence remains a pressing problem. The most recent statistics available indicate that police received 24,067 reports of incidents of domestic abuse in fiscal year 2010.[64] Of those incidents, 19,213 were crimes against women, as opposed to 3628 against men.[65] This confirms that most abuse victims in Iowa are women: 80% to 85% are women, while 15% to 20% are men.[66] Statistics from 2009 echo the same trends.[67]

Additionally, in 2009 the abuser used some sort of weapon in 90% of reported cases[68] and was under the influence of alcohol or drugs in 18.9% of reported cases.[69] The majority of incidents reported during 2009 occurred during nighttime hours, with 36% reported between 6:00 P.M. and midnight.[70] The presence of a weapon, an abuser's use of alcohol or controlled substances, and the timing of the incidents limit the feasibility of a victim safely removing herself from the situation or calling for help in a timely fashion.

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59. JENNIFER L. TRUMAN, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NATIONAL CRIME VICTIMIZATION SURVEY: CRIMINAL VICTIMIZATION, 2010 (2011), *available at* www.bjs.gov/content/pub/pdf/cv10.pdf.

60. PATSY KLAUS, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, NATIONAL CRIME VICTIMIZATION SURVEY: CRIME AND THE NATION'S HOUSEHOLDS, 2005 (2007), *available at* www.bjs.gov/content/pub/pdf/cnho5.pdf.

61. Penny Starr, *Gloria Steinem: In U.S., Home 'Is Single Most Dangerous Place for a Woman'*, CNSNEWS.COM (Oct. 12, 2012, 4:42 PM), http://cnsnews.com/news/article/gloria-steinem-us-home-single-most-dangerous-place-woman.

62. JASPER, *supra* note 36, at 14.

63. *Id.* at 13.

64. THOMAS J. MILLER ET AL., IOWA DEP'T OF JUSTICE ATTORNEY GEN.'S OFFICE: CRIME VICTIM ASSISTANCE DIV., THREE-YEAR PROGRAM REPORTS: FISCAL YEARS 2008, 2009, 2010, at 16 (2011), *available at* http://www.iowa.gov/government/ag/helping_victims/contents/ARFY08_09_10.pdf.

65. *Id.*

66. IOWA LEGAL AID, DOMESTIC ABUSE AND THE LAW: QUESTIONS AND ANSWERS ABOUT IOWA LAW ON DOMESTIC VIOLENCE 1 (2011), *available at* http://www.iowalegalaid.org/files/A3ED30CF-AFFE-7431-9310-0D521E4312AF/attachments/4F5F4234-5C80-4B43-8E9F-576F6B6C58F6/domestic-abuse-and-the-law-oct-2011.pdf.

67. IOWA DEP'T OF PUB. SAFETY, IOWA UNIFORM CRIME REPORT 2009, at 125–26 (2009) (documenting victims by gender and reporting that in 2009, 79.8% of offenders arrested for domestic violence were male).

68. *Id.* at 129.

69. *Id.* at 130.

70. *Id.* at 124.

In fiscal year 2010, across the entire state of Iowa abuse victims made 72,033 crisis calls and spent 99,585 nights in a domestic violence shelter.[71] Of the 4939 people who relied on the domestic violence shelter system, 2690 were women, 2122 were children, and a mere 127 were men.[72] Unfortunately, funding cuts continue to leave many Iowans without access to services, particularly those in less populated, more rural areas.[73] Over the past ten years, funding cuts resulted in the closure of 11 victim service programs across the state, almost all in rural regions.[74] The closures, coupled with the fact that the average stay at shelters continues to rise, from two-and-a-half weeks in 2002 to two months in 2007,[75] pose a challenge for individuals trying to leave a batterer who have nowhere else to turn.[76]

Even if abuse victims have a shelter nearby, many women, particularly those in rural areas, will "choose to remain in their own communities, or do not identify with shelter care as the solution to their particular abuse

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71. MILLER ET AL., *supra* note 64, at 16.

72. *Id.*

73. *See* NAT'L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS: 07 (2007), *available at* http://nnedv.org/downloads/Census/DVCounts2007/DVCounts07_State Snapshots_IA.pdf (stating that in 2007 there were 114 unmet requests for services). "Due to a lack of resources, many programs in Iowa reported a critical shortage of funds and staff to assist victims in need of services." *Id.* In 2011, a 10% cut in state funding and a 14% federal cut from the Victims of Crime Act funding stream added to the budget constraints. Tierra Simpson, *Services for Sex Abuse, Domestic Violence Victims See Funding Cut*, DAILY IOWAN (Oct. 10, 2012, 6:30 AM), http://www.dailyiowan.com/2012/10/10/Metro/30256.html. In Iowa City, Iowa, "between 2000 and 2013, domestic violence services . . . have taken a 29% loss in support services, whether that be programs closing, programs merging, or loss of funding. That's significant in any field." Telephone Interview with Elizabeth Albright Battles, Skylark Project Dir., Iowa Coal. Against Domestic Violence (Feb. 4, 2014).

74. Telephone Interview with Elizabeth Albright Battles, *supra* note 73.

75. NAT'L NETWORK TO END DOMESTIC VIOLENCE, *supra* note 73. The census report goes on to explain the need for a shelter system and a coordinated community response to help victims in rural areas who lack access to food pantries or other forms of community assistance. *Id.*

76. The number of victims Iowa's domestic violence programs serve daily has also decreased since 2010. *Compare* NAT'L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS: IOWA SUMMARY (2010), *available at* http://nnedv.org/downloads/Census/DVCounts2010/DVCounts10_StateSummary_IA_Color.pdf [hereinafter NNEDV: 2010] (reporting Iowa programs served 1002 victims in one day in 2010), *with* NAT'L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS: IOWA SUMMARY (2011), *available at* http://nnedv.org/downloads/Census/DVCounts2011/DVCounts11_StateSummary_IA.pdf [hereinafter NNEDV: 2011] (reporting 824 victims served in one day by Iowa programs in 2011), *and* NAT'L NETWORK TO END DOMESTIC VIOLENCE, DOMESTIC VIOLENCE COUNTS: IOWA SUMMARY (2012), *available at* http://nnedv.org/downloads/Census/DVCounts2012/DVCounts12_StateSummary_IA.pdf [here inafter NNEDV: 2012] (reporting 737 victims served in one day by Iowa programs in 2012). The funding cuts to domestic violence programs may partly explain the decline in the provision of services, and the increase in daily, unmet requests for services supports this contention. NNEDV: 2010, *supra*; NNEDV: 2012, *supra* (noting that in 2010 Iowa programs failed to meet 119 requests for services on a given day, but in 2012 that number climbed to 175 unmet requests for services on a given day). In 2012, however, 737 victims were still served in one day, demonstrating the continued prevalence of domestic violence in the state. NNEDV: 2012, *supra*.

situation."[77] The shelter might be difficult for victims to reach if it is in another county.[78] In small communities, the shelter may not be confidential because a victim's neighbors, relatives, or even relatives of her abuser may staff the shelter.[79] In short, even when victims have access to resources, barriers may prevent their use.

Abuse victims' lack of options and resources is particularly concerning when "a third of homicides in Iowa each year are committed by a family member or intimate partner," and in 15 years, 205 Iowans were "killed in domestic-abuse related murders."[80] The Iowa Coalition Against Domestic Violence recognizes this concern, noting that even though intimate partner violence and sexual assault are second only to drug offenses, the state of Iowa has one of the lowest funding rates for victim services nationwide.[81] In sum, the national and state-specific statistics speak for themselves in documenting the high prevalence of intimate partner violence. In spite of legislative efforts like the Violence Against Women Act[82] and the formation of the Office on Violence Against Women through the Department of Justice,[83] each year roughly six million women across the United States have a personal story to tell of their own abuse.[84]

C. *Women Who Kill Their Abuser as a Final, Defensive Act of Desperation*

For a small percentage of women, their story of abuse is only a story of survival because they, like Dixie Shanahan, believed escaping their abuse depended on the death of their abuser. Those feelings of desperation reflect that battered women are often "hypersensitive" to their abuser's ticks and triggers, and therefore can recognize when their abuser's attitude changes and when he may carry out a threat.[85] Many times, abused women have

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77. Telephone Interview with Elizabeth Albright Battles, *supra* note 73.

78. *Id.*

79. *Id.*

80. *See* IOWA LEGAL AID, *supra* note 66, at 1; MILLER ET AL., *supra* note 64, at 9 (reporting increasing incidents of domestic abuse murder: 14 in fiscal year 2008, 45 in fiscal year 2009, and 78 in fiscal year 2010).

81. Telephone Interview with Elizabeth Albright Battles, *supra* note 73.

82. *See About the Office: History*, OFFICE ON VIOLENCE AGAINST WOMEN, U.S. DEP'T OF JUST., http://www.ovw.usdoj.gov/overview.htm (last visited Nov. 2, 2014) ("In 1994 Congress passed the Violence Against Women Act (VAWA) in recognition of the severity of crimes associated with domestic violence, sexual assault, and stalking. This Act emerged from the efforts of a broad, grassroots coalition of advocates and survivors who informed the work of Congress. . . . This Act enhances the investigation and prosecution of violent crimes against women.").

83. The Office on Violence Against Women originated in 1995 and "administers financial and technical assistance to communities across the country that are developing programs, policies, and practices aimed at ending domestic violence, dating violence, sexual assault, and stalking." *Id.*

84. JASPER, *supra* note 36, at 5–10, 13.

85. Kit Kinports, *So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense*, 23 ST. LOUIS U. PUB. L. REV. 155, 180–82 (2004).

learned that defending themselves in the midst of a beating will only result in more harm, and their efforts to protect themselves, to seek legal intervention, or to leave the relationship have failed.[86] The "immediacy" of the situation felt by abused women therefore bears resemblance to the "hostage who is being slowly poisoned over a period of time, or who has been told to expect to die later in the week, and who suddenly has a window of opportunity to attack her kidnapper and save her life."[87]

Generally speaking, men are more likely to kill than women, but when women commit homicide, "their victims are most often male intimates: husbands, boyfriends or cohabitants."[88] Still, a woman murdering her male partner is a rare occurrence—of the murders involving intimate partner violence, a woman was the victim in three out of four instances.[89] Although "women are 7 to 14 times more likely than men to report suffering severe physical assaults from an intimate partner" and are the principal victims of intimate partner violence,[90] statistics indicate that women do not resort to killing their abuser often.[91]

In fact, the statistics further demonstrate that men have benefitted more from programs for intimate partner violence victims than women. Since the battered women's and shelter movements began, the rate of male homicides has decreased while the rate of women killed by an intimate partner has remained steady.[92] Scholars have found that intimate partner homicide rates are higher in states with mandatory arrest laws for domestic violence.[93] Scholars contend that "[w]omen may be less likely to kill their partners when an aggressive police response is readily available, but it appears the threat of arrest and prosecution has done little to dissuade abusive men from killing."[94]

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86. *Id.*

87. *Id.*

88. CHARLES PATRICK EWING, BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION 23 (1987).

89. JASPER, *supra* note 36, at 14.

90. *Id.*

91. In 2000, "1247 women and 440 men were killed by an intimate partner." CALLIE MARIE RENNISON, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993–2001, at 1 (2003), *available at* http://www.bjs.gov/content/pub/pdf/ipv01.pdf. However, the survey added that "[i]n recent years, an intimate partner killed approximately 33% of female murder victims and 4% of male murder victims." *Id.* The Department of Justice further reveals that as compared to men, women are five to eight times more likely to face intimate partner violence. JASPER, *supra* note 36, at 13. Thus, women are commonly not the batterer but the battered.

92. Kate Pickert, *What's Wrong with the Violence Against Women Act?*, TIME (Feb. 27, 2013), http://nation.time.com/2013/02/27/whats-wrong-with-the-violence-against-women-act/ (noting that since VAWA's enactment, the rate at which women have killed their partners decreased 40% between 1995 and 2008). Within the same period, however, the rate of men killing their partners dropped by a mere 7%. *Id.*

93. *Id.*

94. *Id.*

In sum, it appears that victim services stemming from the battered women's movement have benefited men more than women. Consequently, there remains a continued need to explore options that will help women and to question when women will receive the full benefit of the law.

Equity under the law demands changes in intimate partner violence law. The questions individuals still ask today suggest significant progress is necessary to reach equality under the law. The (wrong) question that those outside the intimate partner violence field often ask—upon hearing that an abused woman resorted to murder because she felt it was her only option—is, "Why doesn't she just leave?"[95] The answer is: "She does leave. She is leaving. She left."[96] For instance, Dixie left her relationship with Scott multiple times, even moving to Texas to live with her sister.[97] However, leaving is "[t]he most dangerous time" for victims/survivors of intimate partner violence.[98] An abuser often responds by trying to reassert his power and control through violence.[99] Law professor Martha Mahoney calls this process "separation assault," where the abuser carries out an "attack on the woman's body and volition [in order to] prevent her from leaving, retaliate for the separation, or force her to return."[100] Consequently, a victim or survivor may return out of fear or may make an assessment that it will be safer to stay than face increased violence. Other women may not leave because they have nowhere to go since the batterer may have isolated her from friends and family. Some victims have no financial resources, especially if their abuser controls their money and has kept them out of the workforce, intentionally hindering their

95. *See* Ann Jones, *'Why Doesn't She Leave?' The Realities Facing the Battered Woman Are Much More Complex Than the One Question That's Most Frequently Asked About Her*, SEATTLE TIMES (Aug. 14, 1994), http://community.seattletimes.nwsource.com/archive/?date=19940814&slug=1925145 (quoting ANN JONES, NEXT TIME SHE'LL BE DEAD: BATTERING AND HOW TO STOP IT 131 (1994)) ("When faced with the realities of 'domestic violence,' any reasonable person has to ask: What can be done to prevent it? Unfortunately, the question most of us ask is: Why doesn't she leave? It's a question that illuminates a profound misunderstanding of the realities facing the battered woman. . . . This question, which we can't seem to stop asking, is not a real question. It doesn't call for an answer; it makes a judgment. . . . It transforms an immense social problem into a personal transaction, and at the same time pins responsibility squarely on the victim. . . . It simultaneously suggests two ideas, both of them false: that help is readily available to all worthy victims (which is to say, victims who leave), and that this victim is not one of them.").

96. *Id.* (quoting JONES, *supra* note 95, at 132).

97. Goodmark, *supra* note 1, at 276.

98. *Domestic Violence Handbook: Common Myths and Why They Are Wrong*, DOMESTICVIOLENCE.ORG, http://www.domesticviolence.org/common-myths/ (last visited Nov. 2, 2014).

99. Ruth E. Fleury et al., *When Ending the Relationship Doesn't End the Violence: Women's Experiences of Violence by Former Partners*, 6 VIOLENCE AGAINST WOMEN 1363, 1365 (2000).

100. *Id.* (quoting Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 65 (1991)).

development of marketable skills.[101] Victims and survivors like Dixie do not feel the criminal justice system provides adequate relief.[102]

While many people ask why the abuse victim did not just leave, few think to ask, "What's wrong with that man? What makes him think he can get away with that? . . . Is she getting adequate police protection?"[103] The victim who endures the pattern of violence instead receives the blame. As feminist scholar and journalist Ann Jones argues, rather than asking the age-old question "Why doesn't she leave?," we should instead focus on "Why hasn't this violence been stopped?"[104]

D. Defenses Available to Victims/Survivors Who Kill Their Abuser

Unfortunately, the violence has not been stopped. Because intimate partner violence still remains the "leading cause of injury to women in the United States,"[105] and considering the dynamics of an abusive relationship, some women turn to final acts of desperation when they have lost all hope that they will ever escape the violence. While often confusingly referred to as "the battered woman's defense," there actually is no such defense per se.[106] Instead, women who kill their abuser often rely on the defense of self-defense.[107] Defense counsel may only present evidence, including expert testimony, of Battered Woman Syndrome for the jury to consider when deciding whether the woman acted in self-defense.[108] Subpart 1 lays out the self-defense doctrine, while Subpart 2 discusses self-defense law as it exists for women who kill their abusers.

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101. Sarah M. Buel, *Fifty Obstacles to Leaving, a.k.a., Why Abuse Victims Stay*, 28 COLO. LAW. 19, 20–25 (1999), *available at* http://www.vcpionline.org/pdfs/50%20Reasons%20Why%20Victims%20Stay.pdf (recounting her own attempts to escape from intimate partner violence and elaborating upon 50 barriers either she or her legal clients experienced in trying to do so); *see also* EWING, *supra* note 88, at 13 (documenting barriers women may face in seeking help or ending an abusive relationship).

102. *See* José Martinez, *'Killing You Daily': An Abuse Survivor Who Killed Her Abuser Tells Her Story*, ON CENT. (Sept. 17, 2012, 11:29 AM), http://www.oncentral.org/news/2012/09/17/killing-you-daily-abuse-survivor-who-killed-her-ab/ (interviewing a survivor, Kelli, about her experiences with the criminal legal system).

103. Jones, *supra* note 95. These misconceptions still exist in spite of an increased legislative focus on intimate partner violence. *See* Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 54 (2013).

104. Jones, *supra* note 95.

105. *Facts About Domestic Violence*, ILL. DEP'T OF PUB. HEALTH, http://www.idph.state.il.us/about/womenshealth/factsheets/dv.htm (last visited Nov. 2, 2014).

106. RUSSELL, *supra* note 24, at 5.

107. *Id.* at 117.

108. *Id.*

1. Self-Defense Law

Today, the law in the United States affords victims the opportunity to argue self-defense as a justification for their actions.[109] "A justification defense is one in which the defendant claims [s]he did the right thing or took the most appropriate action under the circumstances."[110] Self-defense falls within this category because it "focus[es] on the correctness or justness of the defendant's action."[111] Victims claiming self-defense argue "that under the circumstances [they] did what society would have wanted [them] to do—kill [their] attacker rather than be killed [themselves]."[112] Self-defense is often the preferred defense over other options since it operates as a complete defense under which women receive an acquittal. [113]

Under the self-defense doctrine, meaning "defensive use of deadly force," an abused victim who kills her abuser "is justified where the defendant reasonably believes that the force is necessary to protect him or her from *imminent* death or serious bodily injury."[114] The definition of "imminence," however, is contentious in many jurisdictions:[115]

> In some jurisdictions, imminent means immediate, although "imminent" is the word that appears in the case law. Thus, an imminent danger is one that existed or appeared to the defendant to have existed at the very moment he or she fired the fatal shot or landed the fatal stab wound. In other words, an imminent danger is one that appears to require instant, immediate attention. [Such is the case in Iowa.]
>
> Other jurisdictions have adopted a somewhat more relaxed meaning of imminent. In these jurisdictions, imminent does not mean immediate, but rather something that is likely to occur in the future given all relevant facts and circumstances.[116]

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109. ISABELLE SCOTT & NANCY MCKENNA, DOMESTIC VIOLENCE PRACTICE AND PROCEDURE 999 (West 2011). Affirmative defenses in the United States either fall into the category of a justification or excuse defense. CYNTHIA LEE & ANGELA HARRIS, CRIMINAL LAW: CASES AND MATERIALS 588 (West, 2d ed. 2009).

110. LEE & HARRIS, *supra* note 109, at 588.

111. *Id.* at 589.

112. *Id.* Comparatively, excuse defenses "focus on the individual defendant and whether he is blameworthy or culpable. In other words, the defendant's act is presumed to have been wrongful, but the defendant asks us to excuse him for some other reason." *Id.*

113. SCOTT & MCKENNA, *supra* note 109, at 999. Contrast justification defenses with the other defenses available to abuse victims, like insanity. Insanity is an excuse or partial defense, requiring a different form of incarceration in a mental institution. *Id.*

114. *Id.* (emphasis added).

115. *Id.* at 1001.

116. *Id.* at 1001–02.

While various common law jurisdictions have framed the legal standard differently,[117] intimate partner violence victims still argue self-defense since it offers them a full acquittal.[118]

2. The Problem of "Imminence" for Victims and Survivors

In order for a victim and survivor of intimate partner violence to meet the standard for self-defense in the United States, she must "have believed that . . . she was in imminent danger of being killed or seriously injured."[119] If she is in a common law jurisdiction that interprets "imminent" to mean "immediate," as Iowa does, she must have thought the danger "existed or appeared to [her] to have existed at the very moment [she] fired the fatal shot or landed the fatal stab wound."[120] In light of Dixie's story[121] and the experiences of other women who kill a batterer either in their sleep or "during any time that [the assailant] is not attacking her, the distinction between [an impending or forthcoming] and immediate injury is a critical one."[122] Women who kill a batterer while he is asleep have a difficult time convincing a court that the temporal proximity of the abuser's force required immediate action. The North Carolina case *State v. Norman* illustrates this point.

In *Norman*, the defendant shot her husband in his sleep after he beat her and threatened to kill her before the next morning.[123] The appellate and trial court held that the jury should not receive a self-defense instruction because "no reasonable person would have perceived the immediate threat of harm from someone who is asleep."[124] The court did not consider any testimony on the battered woman's defense because it involved subjective, not objective, reasonableness.[125] Consequently, common law jurisdictions that require immediate action pose a challenge to women who wait until they have a physical advantage over their batterer before defending themselves. The

117. *See id.* (documenting different state approaches to immediate or imminent injury). In contrast to states following the common law, some states have adopted the Model Penal Code's provision for self-defense, "Use of Force in Self-Protection." MODEL PENAL CODE § 3.04 (1962). Under this standard, "the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion." *Id.* § 3.04(1). In this respect, the victim must seek to defend herself as the assailant is threatening her.

118. *See supra* note 113 and accompanying text.

119. SCOTT & MCKENNA, *supra* note 109, at 1001.

120. *Id.*

121. *See supra* Part I (retelling Dixie's story and explaining how she killed her abuser in his sleep).

122. SCOTT & MCKENNA, *supra* note 109, at 1002.

123. *Id.* (citing State v. Norman, 378 S.E.2d 8 (N.C. 1989)).

124. *Id.*

125. *Id.*

"immediacy" element also results in harsher sentences for these women, because they cannot meet all of the requirements for self-defense.[126]

III. IMMEDIACY VERSUS NO IMMEDIACY: EXAMINING TWO APPROACHES

This Part examines two approaches to immediacy, one in the United States and one in the United Kingdom. Subpart A specifically considers Iowa's self-defense law, while Subpart B examines the lack of an immediacy requirement in the United Kingdom in light of recent legal revisions. The protections afforded victims in self-defense law have important ramifications for the criminal justice system, because if women do not think they can turn to the courts for assistance, they may feel left without options in a system that has likely already failed to provide safeguards from abuse.[127]

Before discussing the two laws, which deal with different types of defenses, it is important to understand how the analogy to United Kingdom law operates. Although the United Kingdom had provocation as a partial defense until it replaced it with "loss of self-control," immediacy is an element of the provocation doctrine in both the United Kingdom and the United States. While the United States has a provocation defense, battered women typically argue self-defense rather than provocation. Consequently, this Note does not compare provocation across both countries. However, non-confrontational homicide raises questions of immediacy in both the United States and the United Kingdom, and self-defense has the same temporal proximity of force requirement as provocation. Therefore, battered women who kill in non-confrontational settings and who seek self-defense in the United States confront the same "immediacy" challenges as women in the United Kingdom.

A. *IOWA'S SELF-DEFENSE LAW*

Iowa law has not addressed this immediacy problem.[128] In Iowa, "[a] person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force."[129] The "imminent" requirement in Iowa and in other jurisdictions[130] requires the use of force to immediately follow the

126. *See* EWING, *supra* note 88, at 5 (conducting a survey of over 100 battered women who killed their abuser).

127. *See supra* notes 10–11 and accompanying text.

128. The law has not changed since its inception.

129. Iowa Code § 704.3 (2013).

130. States adopting similar approaches to Iowa in interpreting "imminent" to mean "immediate" include: California (*People v. Davis*, 408 P.2d 129, 132–33 (Cal. 1965); *Pacific Indemnification Co. v. Securities First National Bank*, 248 Cal. App. 2d 75, 101–02 (Cal. Ct. App. 1967) (concurring opinion)), Florida (*State v. Coles*, 91 So. 2d 200, 234–38 (Fla. 1956)), Kansas (*State v. Stewart*, 763 P.2d 572, 576–77 (Kan. 1988)), and North Carolina (*State v. Norman*, 378 S.E.2d 8, 12–13 (N.C. 1989)). SCOTT & MCKENNA, *supra* note 109, at 1001 n.1. Contrast this with jurisdictions employing a relaxed interpretation of "imminent" as something likely to occur in

threat of force by another. In application, this poses a problem for victims like Dixie who kill their abuser in a "non-confrontational" situation, such as when he is sleeping.

In *State v. Nunn*, the Iowa Court of Appeals refused to interpret imminent as anything other than immediate.[131] Barbara Ann Nunn was convicted of second-degree murder for killing Bernard Boyce, with whom she lived for two years.[132] Nunn's self-defense argument failed both in trial court and at the appellate level.[133] Neither court credited her evidence that Boyce repeatedly abused her and that he threatened to kill her on the day of his death.[134] The Court of Appeals affirmed the jury's guilty verdict finding the State presented sufficient evidence to show that because the defendant had the opportunity to cool off—stabbing him a few minutes after he left the area where they had quarreled—she could not benefit from the self-defense doctrine.[135]

B. *CORONERS AND JUSTICE ACT AND "LOSS OF SELF-CONTROL"*

A similar concern about "immediacy" prompted reform to the United Kingdom's common law defense of provocation. Prior to 2010, in the United Kingdom battered defendants relied on the partial defense of provocation.[136] Provocation in England decreased a defendant's charges from murder to manslaughter where a defendant "was provoked by things said or done (or both) to lose his or her self-control," and the jury found "the provocation was enough to make a reasonable person do as the defendant did."[137] The Labour Party's solicitor general at the time, Vera Baird, explained how the law was

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the future given the totality of the circumstances. These jurisdictions include: Georgia (GA. CODE ANN. § 16-3-21(d) (2011 & Supp. 2014)), Massachusetts (MASS. GEN. LAWS. ch. 233, § 23F (2012)), Ohio (OHIO REV. CODE ANN. § 2901.06(B) (LexisNexis 2010 & Supp. 2014)), Texas (TEX. CODE CRIM. PROC. ANN. art. 38.36(b) (West 2005 & Supp. 2014)), Wyoming (WYO. STAT. ANN. § 6-1-203(b) (2013)), New York (*People v. Torres*, 488 N.Y.S.2d 358, 360 (N.Y. Crim. Ct. 1985)), North Dakota (*State v. Leidholm*, 334 N.W.2d 811, 814–15 (N.D. 1983)), and Washington (*State v. Allery*, 682 P.2d 312, 314–15 (Wash. 1984); *State v. Wanrow*, 559 P.2d 548, 558–59 (Wash. 1977)). SCOTT & MCKENNA, *supra* note 109, at 1002 n.2.

131. *See* State v. Nunn, 356 N.W.2d 601, 604 (Iowa Ct. App. 1984), *overruled on other grounds by* State v. Reeves, 636 N.W.2d 22 (Iowa 2001).

132. *Id.* at 603.

133. *Id.*

134. *Id.*

135. *Id.* at 604.

136. CRIMINAL LAW POLICY UNIT, U.K. MINISTRY OF JUSTICE, PARTIAL DEFENCES TO MURDER: LOSS OF CONTROL AND DIMINISHED RESPONSIBILITY; AND INFANTICIDE: IMPLEMENTATION OF SECTIONS 52, AND 54 TO 57 OF THE CORONERS AND JUSTICE ACT OF 2009 (2010), *available at* http://www.justice.gov.uk/downloads/legislation/bills-acts/circulars/moj/2010/circular-12-2010-coroners-justice-act-homicide-provisions.pdf.

137. *Id.*

"both too lenient on those who kill out of anger and too harsh on those who kill out of fear of violence."[138] She added:

> Men who kill out of anger can plead that they were provoked to lose their self-control by something done or said by the victim . . . Women who kill . . . out of fear of violence cannot easily fit into the same defence. Typically, they strike out with a knife in fear as their partners approach to inflict another beating.[139]

Therefore, in the United Kingdom, the immediacy element resulted in discrepant sentencing—men received manslaughter convictions while women received murder convictions that carried automatic life sentences.[140]

The Parliament in the United Kingdom took action by passing the Coroners and Justice Act, which replaced the provocation partial defense with an entirely new partial defense to murder: loss of self-control.[141] Under the Act, the defense now relies on the defendant losing self-control at the time of the offense based on one of three "qualifying triggers," resulting in an individual's death.[142] These triggers include: (1) "where the defendant fears serious violence;" (2) "when certain things have been said or done which amount to circumstances of an extremely grave character and caused the defendant to have a justifiable sense of being seriously wronged;" or (3) "when a combination of the first two situations applies."[143] The Act explicitly specifies that the defendant does not need to suddenly lose control, meaning "there may be a delay between the incident which was relevant to the loss of control and the killing."[144] By enacting the new legislation, the United Kingdom took an official position that affords understanding to victims of intimate partner violence who defend themselves in non-confrontational situations when they feel there is no other option.

The United Kingdom believed that two avenues under the law would be open to victims of intimate partner violence.[145] One avenue, the new fear trigger, aimed to address cases that could not fall within the law of self-

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138. Joshua Rozenberg, *Battered Women Who Kill to Be Main Beneficiaries as Homicide Law Changes*, GUARDIAN (London) (Sept. 30, 2010), http://www.theguardian.com/law/2010/sep/30/murder-law-reform (alterations in original).

139. *Id.*

140. *Id.* This raises similar concerns to mandatory minimums in the United States. Dixie Shanahan's original eligibility for parole after serving 35 years constituted the mandatory minimum. Goodmark, *supra* note 1, at 270.

141. CRIMINAL LAW POLICY UNIT, *supra* note 136. The official title of the act is "The Coroners and Justice Act 2009," but the implementation date was October 4, 2010. *See generally id.*

142. *Id.*

143. *Id.*

144. *Id.*

145. Alan Norrie, *The Coroners and Justice Act 2009: Partial Defences to Murder (1) Loss of Control*, [2010] CRIM. L. REV. 275, 285–87.

defense.[146] "Where an abused woman kills her partner out of fear of violence, such conduct often does not bring the defendant within self defence, either because she reacted disproportionately or because it would be hard to claim that she acted in response to a fear of imminent violence."[147] Thus, the law sought to address the "immediacy" problem by providing a defense for women who kill out of a fear of violence, but not out of a threat of instantaneous harm.

IV. IOWA SHOULD REMOVE "IMMINENCE" FROM ITS SELF-DEFENSE LAW AND REPLACE IT WITH LANGUAGE THAT ACCOUNTS FOR INTIMATE PARTNER VIOLENCE VICTIMS WHO DEFEND THEMSELVES FROM UNAVOIDABLE HARM

Iowa should follow the lead of the United Kingdom, remove "imminence" from its self-defense statute, and replace it with language that accounts for the experience of victims of intimate partner violence who defend themselves from unavoidable, although not immediately impending, harm. This Note proposes the following revision: "Defense of Self or Another" in Iowa should instead read: A person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any *impending or forthcoming* use of unlawful force that is likely to occur given the totality of the circumstances. Iowa should adopt this statutory revision for four reasons: (1) the more expansive definition will not result in an increase of intimate partner murders across the state; (2) Iowa will still remain focused on ending intimate partner abuse; (3) abused women's actions in non-confrontational homicides do not meet the purposes of punishment; and (4) women in the United States continue to face longer sentences than men for comparable crimes.

Statistics demonstrate that broadening the definition of self-defense in Iowa will not result in an increase in intimate partner murders.[148] Opponents contend that removing the "imminence" requirement for victims of intimate partner abuse will subvert the rule of self-defense law into vigilante justice and prompt women to kill their husbands.[149] As one columnist wrote in support of the lengthy sentence Dixie Shanahan received, "Open a loophole for one woman to kill an abusive spouse and pretty soon you've got dozens of dead husbands."[150]

However, current statistics allay these fears. In states with an immediacy requirement, many women have received clemency[151] or were acquitted, and "[t]he media have not reported an uptick in the number of murders of

146. *Id.*

147. *Id.*

148. *See infra* notes 151–57 and accompanying text.

149. Goodmark, *supra* note 1, at 317.

150. *Id.*

151. Clemency is defined as "the power of the President or a governor to pardon a criminal or commute a criminal sentence." BLACK'S LAW DICTIONARY 308 (10th ed. 2014).

abusive partners."[152] Nor have states with a more lenient interpretation of imminence seen a dramatic increase. Most women who are battered do not respond to the abuse by killing their partner.[153] Abused women kill in very specific instances when they feel they have no other choice or option,[154] and the history of violence in their relationship causes them to take action.[155] Between 1976 and 2005, according to a U.S. Bureau of Justice study, women were responsible for just 11% of the homicides in the United States, and only 3% of male homicide victims were killed by an intimate partner.[156] Most of these women are also first-time offenders.[157]

Second, broadening Iowa's self-defense law will not undermine the goal of ending abuse more generally. Those in support of keeping "imminence" within Iowa's definition might contend that changing the self-defense law merely operates as a Band-Aid, rather than addressing the root cause of the harm: the pervasiveness of intimate partner violence itself. As one critic put

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152. Goodmark, *supra* note 1, at 317–18.

153. *Id.* at 318 ("Compared to the number of women in the United States who are battered each year, the number of battered women who kill is very small."); *see also* Mark Reutter, *Battered Women Who Kill in Non-Beating Situation Have Self-Defense Right*, ILL. NEWS BUREAU (Aug. 15, 2005), http://www.news.illinois.edu/news/05/0815women.html ("A U.S. Department of Justice study in 2000 found that 85 percent of domestic assault cases involved men attacking women. The report estimated that 4.5 million male-on-female assaults take place yearly in the U.S., affecting 1.3 million women, resulting in an annual rate of 44.2 assaults per 1000 women over the age of 17. What's more, one in three female murders in 2001 was at the hands of the victim's husband or boyfriend, compared with one in 35 men killed by a wife or girlfriend, according to the Federal Bureau of Investigation's Uniform Crime Reports.").

154. Goodmark, *supra* note 1, at 318 ("[Battered women] kill when their individual assessments of their own situations make them believe that they have no other choice but to kill or be killed.").

155. Heather Douglas, *The Demise of the Provocation Defence and the Failure of the Equality Concepts*, *in* RETHINKING EQUALITY PROJECTS IN LAW: FEMINIST CHALLENGES 41, 41 (Rosemary Hunter ed., 2008) ("[W]omen are more likely to kill their current or previous intimate partner after a history of violence than to kill in any other context.").

156. Ray Legendre, *What Leads a Woman to Kill an Abusive Partner?*, COLUMBIAN (Clark Cnty., Wash.) (June 10, 2012, 9:00 PM), http://www.columbian.com/news/2012/jun/10/what-leads-a-woman-to-kill-an-abusive-partner/. Additional relevant statistics are as follows: "Women [are] victims of intimate partner violence at a rate about 5 times that of males." CALLIE MARIE RENNISON & SARAH WELCHANS, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, SPECIAL REPORT: INTIMATE PARTNER VIOLENCE (2000), *available at* http://www.bjs.gov/content/pub/pdf/ipv.pdf. Furthermore, "[o]ver the past thirty years, the number of women being killed by intimate partners has fallen by about 1% per year. Over that same period of time, however, the number of men being killed by their partners has declined by about 4% annually. Of the 1830 murders attributable to intimate partners in 1998, women made up nearly 75% of the victims, an increase from just over 50% of all victims of intimate partner murder in 1976." Goodmark, *supra* note 1, at 318 (citations omitted).

157. Goodmark, *supra* note 1, at 279 ("Few have resorted to violence against their abusers in the past. . . . 'Women charged in the death of a mate have the least extensive criminal records of any female offenders.' Most have endured repeated, severe abuse over a period of years. At some point, the violence against them escalated to a level where the battered woman believed that if she did not kill her abuser, she would be killed." (citations omitted)).

it, "[a]llowing victims of abuse to invoke an abuse excuse, while doing nothing to prevent the underlying abuse, is little more than symbolism on the cheap."[158] Another opponent suggests that the better option is to "change our experiences, perhaps even eliminate domestic violence, by persuad[ing] the community to change its assumptions about gender relationships."[159]

The small number of cases of non-confrontational intimate partner self-defense should not divert focus from ending abuse more generally. While it is an important goal to eliminate intimate partner violence, the past century at least has demonstrated that this is no simple task. As one individual has noted, "I know of no one who advocates 'doing nothing' about the larger issues and simply focusing on self-defense as the solution to the problem of domestic violence."[160] Lack of funding and resources, in addition to the fact that ending intimate partner violence remains a lofty goal, suggest that focusing on smaller steps is an admirable and effective strategy.

Respected criminal law scholars such as Joshua Dressler also assert that allowing defendants in non-confrontational, intimate partner homicides to rely on self-defense is morally reprehensible and leads to intolerable outcomes.[161] In his words, "[t]o characterize a homicide as 'justifiable' is to say that killing the abuser while he sleeps is the right, good, or proper thing to do, or at least, that killing him constitutes a tolerable, permissible, or non-wrongful outcome."[162] Dressler emphasizes that an abuser does not forfeit his right to live and his life is not expendable—he is deserving of legal protections.[163] To Dressler and critics adhering to this view, non-confrontational homicides do not fit within the meaning of self-defense.

In response to Dressler and his cohort, however, the punishment of women who kill their batterer in self-defense does not serve the justifications

158. Kinports, *supra* note 85, at 190 (quoting ALAN M. DERSHOWITZ, THE ABUSE EXCUSE 39 (1994)) (internal quotation marks omitted).

159. *Id.* (alteration in original) (quoting Anne M. Coughlin, *Excusing Women*, 82 CALIF. L. REV. 1, 65 (1994)) (internal quotation marks omitted).

160. *Id.*

161. Joshua Dressler, *Battered Women and Sleeping Abusers: Some Reflections*, 3 OHIO ST. J. CRIM. L. 457, 461 (2006).

162. *Id.*

163. *Id.* at 465. Dressler's articulation of the moral theory of forfeiture posits that:

> [A] person, by his willful, ongoing, egregious conduct may forfeit his right to life. Therefore, termination of his life constitutes no socially recognized harm to society. . . . udAs one philosopher has critically expressed the significance of the forfeiture theory, the wrongdoer 'no longer merits our consideration, any more than an insect or a stone does.'
>
> Please notice the implications of this moral view. We have decided that a human life is expendable. We can swat him like a fly and toss him in the garbage without guilty feelings.

Id. (quoting Hugo Bedau, *The Right to Life*, 52 MONIST 550, 570 (1986)).

of punishment.[164] One of four theories of criminal punishment typically compels a conviction and sentence: retribution, deterrence, incapacitation, or rehabilitation.[165] The idea "that punishment is necessary to give the criminal what she deserves as a result of her wrongdoing" underlies retribution.[166] Retribution therefore requires a "just desert."[167] The Dixie Shanahan case exemplifies how these women are not getting "just deserts" with the immediacy requirement because they do not qualify for self-defense.[168] Dixie Shanahan, and other battered women who kill, are not benefitting from the death but instead are being restored to the same position as other members in the community.[169]

Opponents believe the imminence requirement is necessary to "send a message to society that the law will not condone such behavior."[170] In this respect, the law values "the sanctity of human life" and establishes that "[n]o matter how egregious a person's conduct may be, human life—even a batterer's life—is not simply expendable."[171] However, if the law really did value the sanctity of life equally, then it would punish men just as harshly as it punishes women for intimate partner crimes. This is not the case. Abuse victims who kill their abuser in non-confrontational self-defense receive harsher sentences than their male counterparts, as occurred in the United Kingdom.[172] While there is little data specific to Iowa, the state likely mirrors the national trend. Nationally, "[t]he average prison sentence of men who kill their women partners is 2 to 6 years. Women who kill their male partners are sentenced on average to 15 years, despite the fact that most women who kill do so in self-defense."[173] These statistics suggest that sentencing discrepancies among men and women may decline since women are more likely to fall outside the protection of self-defense due to the immediacy requirement.

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164. Goodmark, *supra* note 1, at 287.

165. *Id.*

166. *Id.* at 288.

167. *Id.* at 297 ("[T]he idea of just desert was tied to the belief that the punishment should in some sense be proportionate to the crime.").

168. *Id.* at 298–99.

169. *Id.* ("Did Dixie Shanahan derive some unfair advantage from her crime? Was she able to enjoy some greater liberty than others as a result of killing her husband? . . . [W]hat did Dixie Shanahan actually get as a result of her crime? Freedom from abuse. The ability to carry her unborn child to term. Safety for herself and her children. All of the benefits that Dixie Shanahan derived from her crime are taken for granted by most individuals in a free society. Legalistic retributivists believe that if a crime allows the actor to enjoy a wider liberty than others, punishment is justified to rectify that unearned advantage. But what if the crime simply restores the actor to the same state of liberty that others in the community enjoy?").

170. Christine M. Belew, *Killing One's Abuser: Premeditation, Pathology, or Provocation?*, 59 EMORY L.J. 769, 805 (2010).

171. *Id.* at 805.

172. *See supra* notes 136–40 and accompanying text.

173. *Fact Sheet on Battered Women in Prison*, PURPLE BERETS, http://www.purpleberets.org/pdf/bat_women_prison.pdf (last visited Nov. 2, 2014) (citation omitted).

Deterrence, incapacitation, and rehabilitation are ancillary, insufficient justifications for maintaining the "imminence" requirement in Iowa. "[T]here is no empirical evidence to support the claim that battered women engage in serial abusive relationships, and there is no evidence that battered women who kill are likely to kill again."[174] It is also unlikely a battered woman who perceives her imminent death would stop and contemplate the severity of the sentence she could receive for her actions.[175] Weighing the costs of incapacitation (like taxes, loss of income, and her children being raised without a parent)[176] further tips the scales in favor of avoiding severe sentences.[177]

Incarcerating these women also serves no rehabilitative purpose because nothing is wrong with the victim herself. This is one of the major criticisms of using the Battered Woman Syndrome at trial:

> The term 'implies that [the battered woman] is limited because of *her* weakness and *her* problems.' Judges and juries hearing such evidence may make similar assumptions, triggering the rehabilitation justification for punishment: punishment is appropriate in these cases because the battered woman suffers from a condition that must be cured before she can safely resume her place in society.[178]

Many women feel they would have acted the same way as they did if they had to go back and do it all again, given the pervasive abuse suffered and the fact that it was their only option.[179]

Dressler further challenges the removal of the "imminence" requirement by asserting it serves a "life-affirming purpose" where removal of the

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174. Goodmark, *supra* note 1, at 300 (citation omitted).

175. *Id.* at 300–04 (providing an example using Dixie Shanahan's case, "[i]t is unlikely that battered women assimilating their perceptions of imminent death stop to think, 'Dixie Shanahan killed her husband and was sentenced to fifty years of imprisonment. My situation is like hers. I am likely to be sentenced similarly. Therefore, I should find another solution before he kills me.'").

176. *Id.* at 305. "Experts believe that severing the bonds between children exposed to domestic violence and their abused parents can have profoundly negative consequences for those children." *Id.*

177. *Id.*

178. *Id.* at 306–07 (alteration in original) (quoting ELIZABETH M. SCHNEIDER, BATTERED WOMEN AND FEMINIST LAWMAKING 119 (2000)). Adding to this, advocates contend:

> Most battered women who kill already have this understanding, but if faced with the same situation would likely make the same decision, believing that they had no other choice. As Dixie Shanahan explained shortly after her sentencing, 'If I was in the same circumstances, would I do it again? Yes I would . . . knowing what it cost me and my children.' These women need no change in values—only a change in the circumstances that created a situation that led them to kill.

Id. at 307–08 (alteration in original) (citation omitted).

179. *Id.*

requirement presupposes that the threatened behavior will actually occur.[180] Dressler finds the suggestion "that a battered woman should be able to kill *today* because sooner or later the batterer will inevitably kill her" completely unacceptable.[181] For Dressler, because the death of the abuser eliminates the possibility of knowing whether an alternative remedy would have stopped the violence, it is never possible to know whether the victim's action was truly necessary.[182]

However, "[e]ven though 'inevitable future harm' may not be the same as 'imminent harm,' imminence is in some sense a proxy for necessity."[183] Again, consider the example in Part II.C where the battered woman is compared to the kidnapped hostage who is told she will die within a certain period of time, and before that time can expire she has the chance to kill her kidnapper and save herself.[184] While onlookers can truly never guarantee what would have happened, abused women are in the best position to approximate their own safety needs. Further, necessity, in and of itself, is not required under the Iowa statute. Studies confirm that:

> [B]attered women tend to become hypersensitive to their abuser's behavior and to the signs that predict a beating. Many battered women who kill say that something in the abuser's behavior changed or signaled to them that this time he really was serious about carrying out his threats to kill. That experience may enable battered women to recognize the imminence of an attack at a time when others without their prior experience would not.[185]

Given her prior abuse, a woman may also think it is reasonable to defend herself while her abuser is asleep because in the past her defense attempts have only escalated the violence.[186] In this respect, there is not just a "reasonabl[e] fear [of] future abuse," but an "honest[] and reasonabl[e] belie[f] she is in imminent danger of the harm at the time she acts."[187]

Dressler also theorizes a number of situations in which an abuser will change his behavior if still living.[188] Yet, statistics show that abusers are not

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180. Dressler, *supra* note 161, at 467.

181. *Id.*

182. *Id.*

183. Kinports, *supra* note 85, at 182.

184. *Id.*; *see also supra* note 87 and accompanying text.

185. Kinports, *supra* note 85, at 180–83 (citations omitted).

186. *See supra* notes 85–86 and accompanying text.

187. *See* Kinports, *supra* note 85, at 180–83 (citations omitted).

188. Dressler, *supra* note 161, at 467 ("Maybe he will 'see the light;' more plausibly, since so many batterers have drinking problems, he will get help to combat his alcoholism; or maybe he will go through counseling or anger management training . . . . We should not entirely give up on the ability of people to change—that is one reason why *some* reasonable temporal requirement is in order. Beyond this, there is always the possibility that some other event will intervene to render an apparent necessity to use deadly force inoperative. Maybe the batterer will have a

modifying their behavior while they are living. To reiterate a point from Part II.B, the rate at which women have killed their partners decreased 40% between 1995 and 2008, but the rate of men killing their partners dropped by a mere 7%.[189] If anything, these statistics show it is women who are modifying their behavior.

In sum, equal application of self-defense law to victims of intimate partner violence requires revision. Equality is not just formally providing the same services; it demands equality of opportunity to reach equal results. Revisions to the Iowa Code's self-defense statute would promote consistent outcomes within the state of Iowa and help victims of abuse achieve equal treatment in the courtrooms.

V. CONCLUSION

This Note contemplates and ultimately challenges the "imminence" requirement for victims of intimate partner violence in Iowa who kill their batterer in non-confrontational situations. While the Iowa statute uses the term "imminent," which might suggest "impending or forthcoming," judges have interpreted the term practically to mean "immediate." As such, under Iowa's self-defense law, abused women charged with murder must be able to show that they defended themselves at the very instant that they were in danger of being killed or seriously injured. That is, the danger to their life had to be present at the time they used force to defend themselves. While scholars of feminist jurisprudence have historically critiqued the problem of "immediacy," little to no action has occurred to remedy it or to provide legal recourse for abuse victims that reflects the goals of criminal punishment.

The United Kingdom's enactment of the Coroners and Justice Act in 2010 represented a major breakthrough for equality under the law. The United Kingdom recognized the gendered nature of the facially neutral provocation defense in practice—for example, the challenges women who killed an abuser in a non-confrontational act of self-defense faced because they could not meet the "immediacy" element. In response to the discrepant success of men and women relying on the provocation defense, the country took action, abolishing it in favor of the new defense of "loss of self-control." This essentially eliminated the "immediacy" requirement and aimed to give battered women an opportunity to defend themselves in court.

The United Kingdom's approach rekindles the "immediacy" debate and exemplifies how states like Iowa can take a stand against discrimination in the protections afforded women under the law. Analogizing to the removal of "immediacy" in the United Kingdom and reflecting on the historical

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debilitating stroke. Or, maybe, as sometimes happens, the batterer will abandon the family, thus freeing the woman from further abuse, and rendering deadly, autonomy-protecting, force unnecessary.")

189. Pickert, *supra* note 92.

treatment of intimate partner violence, this Note maintains that the Iowa Code should be revised to better account for women's experiences of abuse and the dynamics of power and control inherent in abusive relationships. Specifically, this Note argues Iowa should remove the "imminence" requirement from the complete defense of self-defense, similar to the United Kingdom's removal of "immediacy" from the partial defense of provocation. Iowa should redraft its statute to substitute "imminence" with "impending or forthcoming" in light of the totality of the circumstances in each case.

The absence of the "imminence" requirement in the Iowa self-defense statute may have had a significant impact on the life of Dixie Shanahan, who suffered at the hands of her abuser and then at the hands of Iowa law. In 2007, after considerable thought, Iowa Governor Tom Vilsack commuted Dixie's 50-year sentence, which originally required her imprisonment until 2039.[190] Shanahan now becomes eligible for parole in 2015, after serving a minimum of ten years. Nonetheless, ten years is far too long considering that her incarceration fails to satisfy the justifications of criminal punishment.[191] It is time Iowa's criminal justice system affords victims and survivors, like Dixie, equal footing to live a life free from harm.

190. *Governor Commutes Dixie's Sentence*, HARLAN TRIB., Jan. 9, 2007, at 1A (quoting Governor Vilsack as saying "[t]he result I arrive at today strikes a balance between the views of those who believe the sentence was appropriate and those who believe Ms. [Shanahan] should not be punished at all").

191. Not to mention the other consequential forms of punishment Shanahan faced, such as losing custody of her children. *Dixie Loses Custody of Her Children*, HARLAN TRIB., Jan. 9, 2007, at 2A.